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12 July 1995

Terence:

I have made all of the revisions you and Dr. Kiste suggested, including the introduction and conclusion.

I look forward to graduating in August.

Sincerely,



J. Kalani English

**New Environmental Policy and the Federated States of Micronesia:
International Instruments and State Obligations**

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12 July 1995
Plan B Paper
Center for Pacific Islands Studies
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I. Introduction

Since independence in 1986, the government of the Federated States of Micronesia (FSM) has carried out a vigorous foreign policy. The government has felt that by quickly creating and maintaining diplomatic links with other sovereign nations, the FSM will establish itself as an independent nation-state that is capable of entering into binding relations with other nation states. Early on the FSM opened an embassy in Washington D.C., USA and has since opened embassies in Tokyo, Japan; Suva, Fiji; and the United Nations in New York. While there are currently only four embassies, the FSM maintains diplomatic relations with thirty-nine states.¹

In addition to a vigorous foreign policy in terms of diplomatic recognition, the FSM has pursued a policy of ratifying or acceding to treaties, conventions and other international instruments that are relevant to its development. Moreover, the FSM has been an active participant in negotiating a number of important environmental instruments.

In the context of the modern, post-colonial era of the Pacific islands, the FSM faces challenges similar to the post-World War II liberated and independent nations comprising the Third World. As a small island developing state, the FSM is disadvantaged in terms of capital, technological development and political experience as a nation state relative to the First World. The FSM, for example, is heavily dependent on imports, and has not yet developed a way to lessen its dependency on these imported goods. Indeed, the FSM must overcome the challenge of building a modern nation state with little resources with which to work.

One central point in this discussion is the exploration of alternatives to the dependency inherent in the relationship the FSM has with the developed countries, especially the United States. On the one hand, the FSM receives the majority of its capital resources from the United States, per the Compact of Free Association. Furthermore, the international community offers a mechanism to transfer relevant technology to the FSM through international agreements. Ultimately, however, it is the responsibility of the FSM to take control of its own destiny. Active participation in the international community helps the FSM to fully explore all the alternatives on its own terms. A newly emerging, international environmental management regime represents one alternative on which the FSM has concentrated as a way to better position itself for self sufficiency. In this regard, the FSM has focused its meager resources on two, international environmental instruments.

This paper researches the negotiation processes leading to the establishment of two environmental instruments: the Convention on Biological Diversity and the Framework Convention on Climate Change. Following discussion of the background of these two international instruments, it examines the specific obligations that these impose on the government of the FSM. Further, this paper briefly discusses the structure the FSM has in place to fulfill these obligations. It concludes with recommendations to better enable the FSM to address its significant environmental responsibilities and an analysis of how the recommendations can enhance self-sufficiency for the FSM.

II. Background on Instruments

The Convention on Biological Diversity and the Framework Convention on Climate Change were negotiated under the auspices of the United Nations. As a new member state of the United Nations, the FSM was able to fully participate in the negotiations of these treaties.

Indeed, the FSM realized the importance of these conventions to its national growth and development from their inception.² As a small island developing state, the FSM made a conscious decision to protect its natural resources, and at the same time attempt to develop its economy along the emerging guidelines of sustainable development. With its foreign service taking the lead, the FSM quickly established itself as a leader in the international environmental movement. In the FSM's inaugural address at the United Nations at the Forty-Seventh General Assembly, Resio S. Moses, Secretary of External Affairs stated, "We accept our State responsibility for conserving the biodiversity of our islands and waters, and for using those resources in a sustainable manner."³ This commitment is further reaffirmed in the same address, "To the modest extent that the Federated States of Micronesia has made its presence known within the past year, it has been mostly in the context of the environment, particularly in the intergovernmental negotiating committee for the United Nations Framework Convention on Climate Change."⁴

The FSM's participation in all aspects of the creation and adoption of these two Conventions demonstrates in substantial terms its commitment to the

creation of a new international environmental management regime. Now, implementation remains.

The following sections provide a brief chronology of the key events, decisions and actions in the negotiation and adoption process for the Convention on Biological Diversity and the Framework Convention on Climate Change. This chronology is important to better understand how and why certain decisions were made and how this affected the final documents.

A. Background on the Convention on Biological Diversity

In 1988, the United Nations Environment Programme (UNEP) convened a series of expert group meetings to address biological diversity. In accordance with its governing council decisions, the initial meetings were called the “ad hoc Working Group of Experts on Biological Diversity.”⁵ By the summer of 1990 a new group was established to work out terms of biotechnology transfer. The group was named the “Sub-Working Group on Biotechnology” and was also charged with *in situ* and *ex situ* conservation of wild and domesticated species; access to genetic resources and technology, including biotechnology; new and additional financial resources; and safety of release or experimentation on genetically modified organisms (also known as “biosafety”).⁶ Later on in 1990, UNEP’s governing council established another group to prepare a new international instrument for the conservation and sustainable use of biological diversity. This group was called the “ad hoc Working Group of Legal and Technical Experts.” The first formal Draft

Convention on Biological Diversity was presented by UNEP in 1991. This document was considered by an Intergovernmental Negotiating Committee (INC), whose first meeting was also known as the third session of the ad hoc Working Group of Legal and Technical Experts. From this point on the ad hoc Working Group of Legal and Technical Experts was simply referred to as the INC. The INC met four more times between February 1991 and May 1992, culminating in the adoption of the final text of the Convention in Nairobi, Kenya on 22 May 1992.⁷

The Convention was opened for signature at the United Nations Conference on Environment and Development in Rio De Janeiro, Brazil on 5 June 1992, and received 155 signatories. The Convention entered into force on 29 December 1993 after the 30th ratification.⁸ The Convention has been ratified by 106 countries as of this writing, including the FSM on 7 November 1994.⁹

In May 1993 the first meeting of the Intergovernmental Committee on the Convention on Biological Diversity (ICCBD) was established by UNEP's governing council to prepare for the first meeting of the Conference of the Parties (COP). Four expert panels were established to provide advice to the ICCBD: panel 1 advised on Priorities for Action; panel 2 advised on Economic Implications and Valuation of Biological Resources; panel 3 advised on Technology Transfer and Financial Resources; and panel 4 advised on Safe Transfer, Handling and Use of Living Modified Organisms Resulting from Biotechnology.¹⁰

After a long delay, the first session of the ICCBD met in Geneva from 11 - 15 October 1993. The major outcomes of the first meeting were the

establishment of two Working Groups. Each Working Group was assigned specific tasks to complete. Working Group I dealt with the conservation and sustainable use of biological diversity, the scientific and technical work between the meetings and biosafety issues. Working Group II dealt with the issues of financial mechanisms, process for estimating funding needs, the meaning of “full incremental costs,” the rules of procedure for the COP and technical cooperation and capacity-building.¹¹ Even after long and substantive debate, the Working Groups were unable to reach agreement and thus unable to produce reports for the Plenary sessions of the ICCBD. The result was that only two decisions were adopted by the ICCBD. The first was to establish a scientific and technical committee that would meet before the next session of the ICCBD.¹² The second decision was to request the secretariat to use the Working Group’s unadopted documents as guidance between sessions.¹³

The second session of the ICCBD met for two weeks, from 20 June to 1 July 1994 in Nairobi, Kenya to prepare for the first COP. Issues before the second ICCBD included institutional, legal and procedural matters; scientific and technical matters; and matters relating to the financial mechanisms. One important advancement was the creation of the “subsidiary body on scientific, technical and technological advice” (SBSTTA) and the clearing house mechanism to promote and facilitate technical and scientific cooperation in accordance with article 18 of the Convention for developing countries.¹⁴

The first COP met in Bahamas from 28 November to 9 December 1994. The outcomes of this meeting were promising. Finalization of the clearinghouse mechanism under SBSTTA¹⁵ and the Medium-term work programme for

the next three years, with an emphasis on conservation,¹⁶ were the major accomplishments of the first COP.¹⁷

The Convention has a Preamble, 42 articles and 2 annexes. The Preamble outlines the great need for the conservation of the world's biological diversity, and acknowledges the close and traditional dependence of indigenous communities on biological resources. The 42 articles address the substantive issues of the convention.

They are as follows: article 1, Objectives; article 2, Use of Terms; article 3, Principle; article 4, Jurisdictional Scope; article 5, Cooperation; article 6, General Measures for Conservation and Sustainable Use; article 7, Identification and Monitoring; article 8, *In Situ* Conservation; article 9, *Ex Situ* Conservation; article 10, Sustainable Use of Components of Biological Diversity; article 11, Incentive Measures; article 12, Research and Training; article 13, Public Education and Awareness; article 14, Impact Assessment and Minimizing Adverse Impacts; article 15, Access to Genetic Resources; article 16, Access to and Transfer of Technology; article 17, Exchange of Information; article 18, Technical and Scientific Cooperation; article 19, Handling of Biotechnology and Distribution of its Benefits; article 20, Financial Resources; article 21, Financial Mechanism; article 22, Relationship with Other International Conventions; article 23, Conference of the Parties; article 24, Secretariat; article 25, Subsidiary Body on Scientific, Technical and Technological Advice; article 26, Reports; article 27, Settlement of Disputes; article 28, Adoption of Protocols; article 29, Amendment of the Convention or Protocols; article 30, Adoption and Amendment of Annexes; article 31, Right to Vote; article 32, Relationship between This Convention and Its Protocols;

article 33, Signature; article 34, Ratification, Acceptance or Approval; article 35, Accession; article 36, Entry Into Force; article 37, Reservations; article 38, Withdrawals; article 39, Financial Interim Arrangements; article 40, Secretariat Interim Arrangements; article 41, Depository; and article 42, Authentic Texts. In addition, annex I deals with Identification and Monitoring and annex II (with its 2 parts and 23 articles) outlines methods of Arbitration.

B. Background on the Framework Convention on Climate Change

The World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) established the Intergovernmental Panel on Climate Change (IPCC) in 1988,¹⁸ in response to growing scientific evidence of the contribution of human activities to substantial increases in atmospheric concentrations of greenhouse gases, leading to global climate change. The main concern of the WMO and UNEP was that anthropogenic increases of emissions enhance the natural greenhouse effect, which would result in the additional warming of the Earth's surface. Thus, the focus of the IPCC was to access the scientific information on the various aspects of climate change; evaluate the environmental and socioeconomic impact of climate change; and formulate response strategies.¹⁹ The final report of the IPCC was adopted and the Second World Climate Conference (SWCC) was convened to focus greater global attention on climate change.²⁰

The 45th United Nations General Assembly, upon the recommendations of the report of the Second World Climate Conference, adopted Resolution 45/212 (1990) to begin the process of negotiating a Framework Convention on

Climate Change. An Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC) was established, to be supported by WMO and UNEP. The mandate to the INC/FCCC was to prepare an effective framework convention on climate change. Over 150 states participated in the five sessions of the INC held between February 1991 and May 1992.²¹ The main topics of discussion were the issues of binding commitments, targets and timetables for the reduction of carbon dioxide emissions, financial mechanisms, technology transfer, and “common but differentiated” responsibilities of developed and developing countries. The objective of the INC was to achieve a broad-based consensus for the Framework Convention on Climate Change.

The United Nations Framework Convention on Climate Change was adopted on 9 May 1992, and opened for signature at the United Nations Conference on Environment and Development in Rio De Janeiro, Brazil on 5 June 1992.²² The Convention received 156 signatures at the Conference,²³ and entered into force on 21 March 1993, ninety days after the 50th ratification.²⁴ Subsequent to entry into force, the INC met five more times. These meetings were to work out the mechanisms for transfer of technology, finances and scientific information. Further, legal and institutional issues were refined, and one major sticking point -- that of financial support for implementation for developing countries which required “new and additional” resources to implement the terms of the convention, continued negotiations.

The final INC met in New York in February 1995 to work out the arrangement of the first Conference of the Parties (COP). Other issues before the final INC were the location of the permanent secretariat, whos was to be

the permanent secretariat, rules of procedures, and financial arrangements. Very little progress was made on any of these points, and it was left to the first COP to decide these matters.²⁵

The first COP was held in Berlin, Germany from 28 March to 7 April 1995. While it is still debatable whether the first COP was successful, the final outcomes were good when compared to other Conferences of this nature. For example, the COP agreed on the budget for the 1996-1997 biennium, and to continue to allow the Global Environment Facility (GEF) to act as the interim financial mechanism.²⁶ Another significant decision taken by the COP was to locate the permanent Secretariat in Bonn, Germany. This decision, while not pleasing everyone, will nonetheless allow the COP to establish a permanent office and begin the work of implementation.

The Convention has a Preamble, 26 articles and 2 annexes. The preamble outlines some of the broad negotiating points about why the Convention was important and some of the hopes of the parties to the Convention. The articles deal with specific points and are the substantive sections of the Convention.

They are in order: article 1, Definitions; article 2, Objective; article 3, Principles; article 4, Commitments; article 5, Research and Systematic Observation; article 6, Education, Training and Public Awareness; article 7, Conference of the Parties; article 8, Secretariat; article 9, Subsidiary Body for Scientific and Technological Advice; article 10, Subsidiary Body for Implementation; article 11, Financial Mechanism; article 12, Communication of Information related to Implementation; article 13, Resolution of Questions

regarding Implementation; article 14, Settlement of Disputes; article 15, Amendments to the Convention; article 16, Adoption and Amendment of Annexes to the Convention; article 17, Protocols; article 18, Right to Vote; article 19, Depository; article 20, Signature; article 21, Interim Arrangements; article 22, Ratification, Acceptance, Approval or Accession; article 23, Entry into Force; article 24, Reservations; article 25, Withdrawal; and article 26, Authentic Texts. In addition, the 2 annexes divide the Parties into two categories. Annex I lists the developing and developed countries that have committed to article 4 (2) of the Convention and must comply with greenhouse gas emissions reductions. Annex II lists the developed countries that have agreed to provide financial and technical support for the developing countries. This division is important as the “common but differentiated” obligations are drawn from this list.

The FSM participated in all of the INCs as well as the first COP in Berlin. This has placed considerable cost on the FSM; yet it is a clear indication of the government’s commitment to the protection of the environment.

III. Obligations of State Parties to Instruments

The most important sections of any international instrument are the obligations of States. Obligations are the substantive sections of the instrument in which specific requirements and standards are established. For many developing countries, it is difficult or impossible to meet these obligations without technical and financial assistance from the developed

countries. Because of this, many instruments attempt to work out these issues as part of the obligations, often dividing States along “developed” and “developing” lines. Thus, the most contested areas of negotiations focus on the transfer of technology and finances.

For the FSM, other important aspects of the obligations besides those mentioned above include national capacity building and internal governmental structure for implementation. Because of its status as a small island developing state and a developing state, the FSM qualifies for many concessional arrangements under these Conventions. These arrangements were agreed to by the developed countries as an incentive for participation by the developing countries.

A. Obligations under the Convention on Biological Diversity

The Convention on Biological Diversity outlines several major obligations for State Parties. For example, State Parties agree to adopt national regulations to conserve their biological resources.²⁷ State Parties also agree to take legal responsibility for environmental impacts of activities conducted in other countries by their private corporations. Other important obligations include commitments by developed countries to provide funding for developing countries to implement the Convention, to be administered by the restructured Global Environment Facility (GEF). Moreover, developed countries agree to: the transfer of technology to developing countries on concessional terms, without prejudicing intellectual property rights or patents; the regulation of biotechnology firms; access to and ownership of

genetic materials; and finally compensation to developing countries for extraction of their genetic materials by developed countries.

More specifically, the FSM requires technical and financial assistance to fulfill all of its obligations under the Convention. Some of the major commitments are contained in Articles 6, 8 and 9.

Article 6, General Measures, requires the FSM to “(a) develop a national strategy for the conservation and sustainable use of biological diversity; and (b) integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs and policies.”

Under article 7, Identification and Monitoring, the FSM is obliged to “(a) identify components of biological diversity important for its conservation and sustainable use; (b) monitor the components of biological diversity, with particular attention to those requiring urgent conservation measures; (c) identify processes and categories of activities that have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity and monitor their effects; (d) maintain and organize data derived from identification and monitoring activities.” Annex I to the Convention contains a list of categories to be considered by governments when identifying and monitoring components of biological diversity under this article. The list includes ecosystems and habitats containing high diversity, large numbers of endemic or threatened species, species and communities that are threatened, and described genomes and genes of social, scientific or economic importance.

Article 8 addresses *in situ* conservation, which is defined in article 2 as the “ . . . conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings where they have developed their distinctive properties.” Under Article 8, the FSM is obliged to: “(a) establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (f) rehabilitate and restore degraded ecosystems and promote the recovery of threatened species; (g) establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts; (j) subject to its national legislation and/or other regulatory provisions for the protection of threatened species; (m) cooperate with other state parties in providing financial and other support for *in situ* conservation.”

Article 9 outlines *ex situ* conservation, which article 2 defines as “ . . . the conservation of components of biological diversity outside their natural habitats.” The obligations of FSM under this Article are to: “(a) adopt measures for *ex situ* conservation of components of biological diversity; (c) adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions; (e) cooperate with other state parties in providing financial and other support for *ex situ* conservation facilities in developing countries.”

While articles 6, 8 and 9 contain major obligations, other sections of the Convention are also important. However, articles 6, 8 and 9 outline some of the many internal changes a country must make to comply with the

Convention. Thus, these points require greater focus on the part of governments in order to implement them internally.

B. Obligations under the Framework Convention on Climate Change

The major obligations under the Framework Convention on Climate Change include periodic reports on the FSM's greenhouse gas emissions and efforts to slow climate change; and educational efforts within the country to promote awareness about climate change, and to promote and adopt sustainable management practices, with an emphasis on the promotion and enhancement of sinks and reservoirs for greenhouse gases.²⁸ Other major obligations are: cooperate in planning for the impact of climate change on coastal zones, water resources and agriculture and to inform the public about climate change and its effects with the goal of public participation in developing appropriate responses to climate change.

While the FSM has assumed obligations similar to other developing countries, developed countries have taken on additional obligations. These include financial and technological transfers to developing countries for the monitoring of climate change within these countries.

While not an obligation, Article 3 lays out a set of principles for negotiations. Five broad principles are outlined for the general guidance on climate change issues. These principles, in general, are: 1) the protection of the climate based on common but differentiated responsibilities, 2) full consideration for developing countries that would bear disproportionate amount of burden for climate change, 3) precautionary measures and approaches in adoption and

implementation of policies, 4) respecting each country's right to sustainable development, and 5) respecting the principles of free and open economic systems without using environmental policies as a way to place disguised restrictions on trade. There is a thin line between shared responsibility and national sovereignty. What these principles attempt to outline is a way to balance these interests for the benefit of the world.

The substantive article for the convention is article 4, which is divided into ten paragraphs, and are further divided into sections and in some cases subsections. Because article 4 deals with commitments, there is still substantial debate as to implementation and division of responsibilities.

Article 4.1(a) requires that each country publish and periodically update national inventories of anthropogenic emissions by source and removal by sinks of all gasses not controlled by the Montréal Protocol. 4.1(b) requires governments to formulate, implement and publish national and regional programs to mitigate climate change. 4.1(c) requires each country to promote and cooperate in the development and transfer of technologies, practices and processes that control and reduce or prevent greenhouse gas emissions. 4.1(d) requires countries to promote sustainable management practices, with the goal of the enhancement of sinks and reservoirs of greenhouse gasses. 4.1(e) requires countries to develop plans for climate change, specifically with regards to coastal zone management, water resources and agriculture, protection and rehabilitation of areas affected by drought and desertification and floods. 4.1(f) requires countries to take climate change into account when formulating national plans, environmental policy and other policies such as social and economic policies.

4.1(g) requires countries to promote and cooperate in scientific, technological, technical, socio-economic and other research on climate change. Further, the creation of data archives related to climate change, especially on the cause and effects of climate change as well as social and economic consequences of response strategies is mandated. 4.1(h) requires countries to participate in full, open and prompt exchange of information related to the climate system and climate change. 4.1(i) requires countries to create public awareness, education and training related to climate change, and to encourage the widest participation in the process, including non-governmental organizations (NGOs). 4.1(j) requires countries to communicate to the Conference of the Parties information related to implementation as set out in article 12.

Article 4, Paragraph 2 outlines the specific commitments made by the developed countries and other countries included in annex I of the Convention. For the most part, this paragraph stresses the responsibilities of the developed countries to take the lead in the reduction of greenhouse gas emissions and to transfer technology to developing countries.

Article 4, paragraph 2(a) states that each country shall adopt national policies and implementing measures to mitigate climate change by limiting the amounts of greenhouse gas emissions and protecting and enhancing sinks and reservoirs. Annex I parties and other developed countries should take the lead, and may implement such policies and measures jointly with other parties. 4.2(b) provides for the transmission of detailed information on policies and measures and on projected emissions of greenhouse gases, “with the aim of returning individually or jointly to their 1990 levels.” 4.2(c) says

that the best available scientific knowledge should be used in calculating emissions by source and removals by sinks when meeting the mandates of sections (b) and (d), and that the first COP shall decide on the methodology for these calculations. 4.2(d) requires the first COP to review the adequacy of subsections (a) and (b), and based on their findings, amend these relevant sections. Another such review is mandated no later than 31 December 1998 and at regular intervals after that. Further, 4.2(d) also mandates the first COP to decide on the terms of joint implementation outlined in (a) and (b).

Article 4.3 places responsibility on developed countries to fund cost incurred by developing countries in providing national inventories and information on relevant measures taken to reduce greenhouse gas emissions.

Article 4.4 places further responsibility on developed countries to assist particularly vulnerable developing countries in meeting the cost of adaptation to adverse effects of climate change. 4.5 requires developed countries to promote, facilitate, finance and provide access to the appropriate environmentally sound technologies to the developing countries. 4.6 allows for a “certain degree of flexibility” for economies in transition. 4.7 states that in order for effective implementation by developing countries of their commitments, full account needs to be taken of the fact that economic and social development and poverty eradication are the “first and overriding priorities” of the developing countries.

4.8 lists particularly vulnerable classes in developing countries needing special attention. These classes include: Small Island countries, low-lying coastal areas, arid or semi-arid areas and forested areas liable to forest decay,

areas prone to natural disasters, areas prone to drought and desertification, areas with high atmospheric pollution, areas with fragile ecosystems, including mountainous ecosystems, countries dependent on the production of fossil fuels and/or consumption of fossil fuels, and land-locked and transit countries. 4.10 considers the impact of implementation on vulnerable economies -- those dependent on fossil fuels, and having serious difficulties switching to alternatives.

Article 5 encourages further research and systematic observation as outlined under article 4.1(g). 5(a) encourages support for international programs and networks to define, conduct and assess research and data collection to minimize duplication of research. 5(b) encourages international efforts to strengthen national scientific and technical research in developing countries. 5(c) states that the particular concerns of developing countries need to be addressed regarding their ability to participate in research efforts outlined in subsections (a) and (b).

Article 6 seeks to promote education, training and public awareness about "climate change and its effects." Article 7 sets out the main roles of the Conference of the Parties to: regularly review implementation of the FCCC; periodically examine the obligations of the parties and institutional arrangements; facilitate exchange of information and coordination of measures; and, at its first session, adopt its own rules of procedures.

Article 8 deals with the function and role of the FCCC Secretariat. Article 9 establishes a subsidiary body for scientific and technical advice, open to participation by all parties in a multi-disciplinary approach. Article 10

establishes a subsidiary body for implementation to assist the COP in the assessment and review of the FCCC's implementation.

Articles 11 - 26 deal with more specific administrative matters such as: a financial mechanism; communication of information on national inventories and measures taken; settlement of disputes; amendments to the FCCC; protocols, voting and signatures; interim arrangements, including secretariat and the entities entrusted with the financial mechanism (the Global Environment Facility, UNDP and UNEP); ratification, acceptance, approval or accession; withdrawal; and entry into force.

Finally, the two annexes list countries referred to in the text of the FCCC. Annex I comprises 24 developed countries, the European Union and 11 economies in transition. Annex II excludes the economies in transition but is otherwise identical to annex I.

The substantive sections of the Convention are article 4, 7 and 10, which cover the main obligations and commitments of states and outline various bodies for the implementation of the Framework Convention on Climate Change. The other articles outline administrative matters and other areas of concerns such as education and participation.

VI. Government's current capacity to fulfill obligations

Formerly the only national office that was directly involved in environmental affairs was the recently disbanded Environmental Protection Agency (EPA).²⁹ To achieve the particular end of compliance with the obligations of these Conventions, environmental responsibilities were distributed among the following departments and offices: the Division of Community and Environmental Sanitation within the Department of Health Services, which inherited some of the functions of the disbanded Environmental Protection Agency (EPA); the Office of Planning and Statistics, which during the latter part of 1994 hired a Climate Change Coordinator; the Division of Agriculture, within the Department of Resources and Development; and the Division of Marine Resources, also within the Department of Resources and Development.³⁰ This overlap of functions has contributed to work being handled in a disjointed manner.

There has been some consolidation and concerted efforts to meet these obligations in the national structure. However, these efforts do not adequately address all the obligations entered into by the FSM government. Indeed, there is great need for the enhancement of the current capacity in government to hire and, where appropriate, train personnel qualified in these specialized areas.

The recent creation of the President's Council on Environmental Management and Sustainable Development, commonly referred to as the SD Council, provides a focal point within the national structure of the FSM government to address environmental issues and obligations. Created in

April 1995 through Presidential Order, the SD Council is mandated to oversee and make recommendations to the President on all environmental matters.³¹ The SD Council, headed by the Vice President, is composed of the Attorney General, the National Planner, the Secretaries of the Departments of External Affairs, Health Services, Education, Resources and Development, the Executive Director of the Micronesian Maritime Authority, and the Disaster Control Officer from the Office of the President. The Office of Planning and Statistics will function as the secretariat of the SD Council.³² The SD Council has only met one time since its creation, but it clearly provides the FSM the opportunity to pursue the coordinated effort needed to effectively meet its obligations under these Conventions.

V. Recommendations to fulfill obligations

As the FSM enters into more international agreements, it becomes apparent that the national structure must adapt to accommodate these additional obligations. The FSM Government expects that the SD Council will have the responsibility to “oversee global environmental responsibilities and obligations including the UN Commission for Sustainable Development, Agenda 21, the Programme of Action for the Sustainable Development of Small Island Developing States, the Convention on Biological Diversity, the Framework Convention on Climate Change, the Law of the Sea, and other international treaties.”³³ Indeed, the far reaching powers vested in the SD Council is a good indication of the government’s commitment to carry out its new environmental responsibilities.

The SD Council may well become the foundation of a new cabinet post, perhaps a Secretary of the Environment, to which the sub-parts of agencies, departments and offices currently dealing with environmental issues could be administratively attached. This process would ensure a focused approach to environmental issues. Alternatively, it could develop as an independent agency under the Vice-President.³⁴ In either case, the powers already vested with the SD Council are considerable. Section 7 of the Order enumerates 11 specific powers, which if fully utilized will have the same effect as a new Department in cabinet. Some of these powers are: to make recommendations on all matters relating to the environment; to survey, evaluate and make recommendations for improving the structure and administrative procedures of National Government and agencies; to establish subcommittees; to coordinate all financial, legislative, budgetary and reporting requirements for environmental protection; provide technical assistance, within existing resources, to the States and NGOs; to issue reports; to call instructional conferences; to perform other task assigned by the President; to receive donations and foreign aid for environmental advisors; and to build capacity and provide training for the people of the FSM in environmental issues.³⁵

Further, the Presidential Order subordinates other existing Departments and agencies to the SD Council, requiring them to “. . . ensure that all its operations are conducted in a manner to ensure the principles of responsible environmental management and sustainable development” as outlined by the SD Council.³⁶ As the SD Council has met only once since its creation, these broad powers have not yet been exercised. However, in time and with

the political will, the SD Council will become the main force behind environmental issues in the FSM.

The Nationwide Environmental Management Strategies (NEMS), prepared for the FSM by the Asian Development Bank and the South Pacific Regional Environmental Programme (SPREP), also proposes many excellent program areas for consideration.³⁷ These proposals should be given serious consideration by the SD Council. Indeed, the report should be revisited and adopted by the SD Council as a basis for action and implementation.

In general, it is recommended that an environmental omnibus bill be placed before Congress to address the specific areas requiring legislation. Close and continual links with regional organizations such as (but not limited to) SPREP and the South Pacific Commission (SPC) should be strengthened and maintained. New links must be forged with innovative partners. The National Tropical Botanical Garden (NTBG), based in Hawai'i, is but one example of a partnership that could yield unexpected benefits.³⁸ Through the Department of External Affairs, funding sources for implementation should be pursued in general, and specifically with the restructured Global Environment Facility.³⁹ Lastly, the establishment of a National Department of the Environment will greatly enhance the FSM's ability to coordinate and conserve scarce financial resources as well as to provide a management regime for all environmental obligations in one Department. Alternatively, the SD Council under the Vice President may implement all of these recommendations through its newly established structure.

In the next sections specific recommendations for implementation of the Convention on Biodiversity and the Framework Convention on Climate Change will be detailed. These recommendations will focus on the main substantive sections of the relevant Conventions and do not cover each instrument in its entirety.

A. Specific Recommendations for Biodiversity

Regarding specific articles of the Convention on Biological Diversity, government must enact a number of national legislative initiatives to fulfill its obligations. The obligations under article 6 mandate a national plan for conservation, including strategies for the integration of this plan into sectoral and cross-sectoral programs and policies. This plan translates into staffing and financial outlays which government currently does not have. It is recommended that government utilize the financial mechanisms of the Convention as well as other innovative funding sources, including Non-Governmental Organizations (NGOs), to build its capacity to fulfill this mandate.

Article 7 dictates that government identify and monitor biodiversity, including activities that may adversely impact biodiversity within its borders, as well as create a database and data management system for this information. National legislation may again be required to set procedures and criteria for identification and monitoring programs. Also, proper staffing and funding are necessary for fulfillment of this obligation. It is recommended that government look to existing programs operating in other parts of the world for data collection and management systems. In addition, regional

organizations are excellent sources of technical advice.⁴⁰ Accordingly, the technical expertise of SPREP, Pacific Islands Development Program (PIDP) and other regional organizations should be consulted throughout the entire process. SPREP has already begun to devise an agenda for regional cooperation in conservation and management plans for biodiversity.⁴¹

In situ conservation, mandated in article 8 of the Convention, includes mechanisms for the establishment and maintenance of “protected areas” and the rehabilitation and restoration of degraded areas. Further, regulatory measures are to be established for the control of biologically modified organisms. In order to properly meet this mandate, article 6 must first be fully realized. The data from this study can be used as the baseline information for the selection of areas for conservation. It is recommended that once the baseline data is collected and analyzed, areas should be selected for conservation and negotiations with landowners commence. Further, national legislation should be prepared to set into law the principles of this article.

Article 9, in which *ex situ* conservation strategies are mandated, translates into reserves and research facilities, as well as other institutional arrangements for the curation of *ex situ* biological specimens. Moreover, measures for the reintroduction of these specimens into their natural habitat are required. Again, national legislation may be necessary. However, to fully implement this obligation, large financial expenditures for the establishment and operation of such facilities as well as specialized expertise are needed. Other agencies in the FSM should be tapped to help minimize these outlays. For example, working partnerships between government and NGOs in the

country as well as outside the country can be arranged. Additionally, large international institutions should be consulted for financial and technical assistance. It is further recommended that conservation facilities be linked to national, regional and international organizations of similar nature to build the capacity of local organizations in the FSM.

All of these recommendations can be carried out through the legislative process, or implemented by the Executive branch through the Vice President through the SD Council. Whichever route is taken, these recommendations will place the government in an excellent position to deal effectively and decisively with its obligations regarding the Convention on Biodiversity.

B. Specific Recommendations for Climate Change

The substantive sections of the Framework Convention on Climate Change are articles 4, 7 and 10, which cover the main obligations and commitments of states, and outline the creation of various bodies for the implementation of the FCCC. Many of the obligations under the FCCC, and specifically article 4, are already dealt with by the creation of the SD Council.

As article 4 is the main implementing section of the FCCC, the obligations outlined in this article need to be carefully interpreted for implementation. In the case of the FSM, only the sections relevant to developing countries apply. In broad terms, article 4 requires large, national inventories of greenhouse gases by emissions (sources) and by sinks (removals) and strategies for programs to mitigate climate change. Moreover, joint implementation of these requirements is encouraged, and in this regard the

FSM is in an excellent position to work with the United States. Given the close political relationship the FSM shares with the US, bilateral implementation regimes under the authority of 4.2(a) should be negotiated with the US and its departments, most notably the US Environmental Protection Agency.

Likewise, educational opportunities can be created between these two countries to jointly address climate change. NGOs in the FSM and the US can also be effectively tapped to help meet the cost of implementation. For example, the National Tropical Botanical Garden is currently developing a proposal for the creation of the Ethnobotanical Center of the Pacific, which would address scientific and technological research in the plant sciences that will also help better understand sinks and reservoirs and the cycles of climate change.⁴² A cooperative arrangement with the NTBG for training and technological transfer will also build the capacity of the FSM to effectively deal with its obligations under both the FCCC and the Convention on Biological Diversity.

Indeed, 4.2(a) is one of the major negotiation points for developing countries. Joint implementation will assure smooth transfer of technology as well as assistance in building the capacity of FSM citizens to conduct scientific research. While joint implementation is a good strategy, caution must be exercised to structure programs that will benefit the FSM. It is recommended that all potential joint implementation projects be screened by the SD Council, which already has the authority to carry this out.

In article 7 a system of continual review and revision of the FCCC is outlined. The role of the Conference of the Parties and its functions are also broadly outlined. To maintain the highest impact in the COP, it is recommended that through the Department of External Affairs a small core of experts be assembled to provide advice and guidance for FSM diplomats at each of the COPs. This will ensure stability in policy and allow for long range strategies. It is further recommended that the SD Council issue white papers, policy briefs and other documents for dissemination at future COPs to better expand the FSM's positions in various implementation issues.

Concerning article 9, which establishes a subsidiary body for scientific and technical advice (SBSTA), it is recommended that the FSM utilize its status outlined in article 4.8 as a small island developing state meriting special consideration to access scientific expertise. Likewise, training opportunities may be available through the SBSTA for FSM citizens. These avenues should be pursued by the SD Council and the Department of External Affairs.

VI. Conclusions

The recommendations made above are based on my close working relationship with the Permanent Mission of the Federated States of Micronesia to the United Nations in New York during 1994 - 1995. This analysis aims to help the reader fully understand options available to the FSM in relation to sustainable development and environmental conservation, as well as fully comprehend the scope of the FSM's

commitments. These recommendations suggest ways for the FSM to reduce its dependency on the developed countries, specifying some of the mechanisms for cooperative arrangements with other countries and organizations that may help to facilitate the transfer of appropriate technology and capital to the Federated States of Micronesia. These recommendations imply that the government of the FSM should be in full control of this process (of transfer); the government is apparently cognizant of its central decision making role based on the FSM's recent actions in organizing the SD Council and its strong support for international efforts. Finally, the recommended, internal arrangements intend to help the FSM government better position itself for self-sufficiency in terms of management of its commitments and resources in relation to international environmental instruments.

When the Convention on Biological Diversity and the Framework Convention on Climate Change are considered together, along with other important international instruments, a great opportunity exists for the FSM to lead the global environmental movement by example. As Costa Rica has done for continental countries, the FSM can establish itself as a model for sustainable development and environmental conservation for small island developing states. There is no better time than now to seize the opportunity.

With the creation of the SD Council, the FSM has demonstrated its willingness to live up to the promise made in its inaugural address at the United Nations in 1992. Yet the creation of an implementing structure alone does not guarantee success. Indeed, there is a long way to go before any substantial progress will be seen.

What is needed is strong political will and a vision for a sustainable future. Apparently the political will exists. The vision is now being clarified and expanded. Once this process is complete, then a national campaign to share, to solicit input and to hone this vision is vital. Only after the majority of the population accepts this vision will sustainable development and environmental conservation become a reality in the Federated States of Micronesia.

Endnotes

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- ¹ Personal Communication, Minister at the Permanent Mission of the FSM to the UN, 1995 hereafter cited as "PC, Minister".
- ² See Gawel, Michael, *The Federated States of Micronesia: State of the Environment Report* for full details.
- ³ UN Document A/47/PV.29 of 21 October 1992, *Provisional Verbatim Record of the 29th Meeting*, page 70.
- ⁴ UN Document A/47/PV.29 of 21 October 1992, *Provisional Verbatim Record of the 29th Meeting*, page 67.
- ⁵ Personal Communication, Dr. Noel Brown, UNEP North America Administrator, hereafter cited as "PC, Brown".
- ⁶ PC, Brown
- ⁷ Varma, 9.
- ⁸ Convention on Biological Diversity, Article 36.1
- ⁹ FSM 1994, 56. See also *The Federated States of Micronesia Instrument of Accession to the Convention on Biological Diversity*, deposited 20 June 1994 and on file at the United Nations Library, for full terms of accession.
- ¹⁰ PC, Brown
- ¹¹ PC, Brown
- ¹² PC, Brown
- ¹³ PC, Brown
- ¹⁴ PC, Minister
- ¹⁵ See UN Document UNEP/CBD/COP/1/11 of 6 October 1994 for full details. See also Memo dated 21 January 1995 from Emilio C. Musrasrik to David

Panuelo, *Report on the First Conference of the Parties (COP) to the Convention on Biological Diversity (CBD), 28 November - 9 December 1994, Nassau, Bahamas*, on file at the Permanent Mission of the Federated States of Micronesia to the United Nations, page 3 for detailed description.

16 See UN Document UNEP/CBD/COP/1/13 of 25 October 1994 for full details. See also Memo dated 21 January 1995 from Emilio C. Musrasrik to David Panuelo, *Report on the First Conference of the Parties (COP) to the Convention on Biological Diversity (CBD), 28 November - 9 December 1994, Nassau, Bahamas*, on file at the Permanent Mission of the Federated States of Micronesia to the United Nations, pages 4 - 6 for detailed description.

17 PC, Minister

18 Bodansky, 51

19 Bodansky, 51

20 Bodansky, 57

21 Bodansky, 60

22 Bodansky, 70

23 Borione & Ripert, 78

24 FCCC, Article 23

25 PC, Minister

26 PC, Minister

27 See UN Document A/Conf. 167/9, *Report of the Global Conference on the Sustainable Development of Small Island Developing States*, Section IX, Biodiversity Resources for similar commitments.

28 See UN Document A/Conf. 167/9, *Report of the Global Conference on the Sustainable Development of Small Island Developing States*, Section I, Climate Change and Sealevel Rise for similar commitments.

29 Harding, 21

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- 30 PC, Minister
- 31 Presidential Order # 14, 11 April 1995
- 32 Presidential Order #14, 11 April 1995
- 33 Presidential Order #14, 11 April 1995, page 3.
- 34 This can become one of the permanent responsibilities of the Vice President, giving the office relevancy in the national structure.
- 35 Presidential Order #14, 11 April 1995, page 5.
- 36 Presidential Order # 14, 11 April 1995, page 6.
- 37 See *The Federated States of Micronesia: Nationwide Environmental Management Strategies* for full details of proposed programs.
- 38 Indeed, much of the scientific work done by the NTBG has already been shared with many of the regional organizations in the Pacific.
- 39 See *Global Environment Facility, Quarterly Operational Report*, Aug. 1994 for details on proposed programs and granting cycles.
- 40 SPREP, 42
- 41 See *Global Environment Facility, Regional South Pacific Biodiversity Conservation Programme* for full details.
- 42 *Conceptual Plans of the National Tropical Botanical Garden: Kahanu Garden Strategic Plan*. May 1995.

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UNITED NATIONS CONVENTION ON BIOLOGICAL DIVERSITY

Preamble

The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources,

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,

Concerned that biological diversity is being significantly reduced by certain human activities,

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source,

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat,

Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

Noting further that *ex-situ* measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity,

Acknowledging further that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies,

Noting in this regard the special conditions of the least developed countries and small island States,

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries,

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,

Noting that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations,

Have agreed as follows:

Article 1. Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 2. Use of Terms

For the purposes of this Convention:

“Biological diversity” means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

“Biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

“Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

“Country of origin of genetic resources” means the country which possesses those genetic resources in *in-situ* conditions.

“Country providing genetic resources” means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.

“Domesticated or cultivated species” means species in which the evolutionary process has been influenced by humans to meet their needs.

“Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

“Ex-situ conservation” means the conservation of components of biological diversity outside their natural habitats.

“Genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity.

“Genetic resources” means genetic material of actual or potential value.

“Habitat” means the place or type of site where an organism or population naturally occurs.

“In-situ conditions” means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

“In-situ conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

“Protected area” means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

"Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

"Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

"Technology" includes biotechnology.

Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 4. Jurisdictional Scope

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

(a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and

(b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

Article 5. Cooperation

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7. Identification and Monitoring

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

Article 8. *In-situ* Conservation

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies;
- (g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and

(e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 11. Incentive Measures

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.

Article 12. Research and Training

The Contracting Parties, taking into account the special needs of developing countries, shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries;

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, *inter alia*, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and

(c) In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

Article 13. Public Education and Awareness

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

Article 14. Impact Assessment and Minimizing Adverse Impacts

1. Each Contracting Party, as far as possible and as appropriate, shall:

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;

(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.

Article 15. Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.
7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

Article 16. Access to and Transfer of Technology

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.
2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.
3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.
4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.
5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

Article 17. Exchange of Information

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.
2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18. Technical and Scientific Cooperation

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.
2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.
3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.
4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.
5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 19. Handling of Biotechnology and Distribution of Its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.
2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

Article 20. Financial Resources

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.

3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.

4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.

6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States.

7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas.

Article 21. Financial Mechanism

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting. For purposes of this Convention, the Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.

2. Pursuant to the objectives of this Convention, the Conference of the Parties shall at its first meeting determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.

3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it shall take appropriate action to improve the effectiveness of the mechanism if necessary.

4. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.

Article 22. Relationship with Other International Conventions

1. The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

2. Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.

Article 23. Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme not

later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.

4. The Conference of the Parties shall keep under review the implementation of this Convention, and, for this purpose, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 26 and consider such information as well as reports submitted by any subsidiary body;

(b) Review scientific, technical and technological advice on biological diversity provided in accordance with Article 25;

(c) Consider and adopt, as required, protocols in accordance with Article 28;

(d) Consider and adopt, as required, in accordance with Articles 29 and 30, amendments to this Convention and its annexes;

(e) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned;

(f) Consider and adopt, as required, in accordance with Article 30, additional annexes to this Convention;

(g) Establish such subsidiary bodies, particularly to provide scientific and technical advice, as are deemed necessary for the implementation of this Convention;

(h) Contact, through the Secretariat, the executive bodies of conventions dealing with matters covered by this Convention with a view to establishing appropriate forms of cooperation with them; and

(i) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of

its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 24. Secretariat

1. A secretariat is hereby established. Its functions shall be:

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;

(b) To perform the functions assigned to it by any protocol;

(c) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;

(d) To coordinate with other relevant international bodies and, in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(e) To perform such other functions as may be determined by the Conference of the Parties.

2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 25. Subsidiary Body on Scientific, Technical and Technological Advice

1. A subsidiary body for the provision of scientific, technical and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the authority of and in accordance with guidelines laid down by the Conference of the Parties, and upon its request, this body shall:

(a) Provide scientific and technical assessments of the status of biological diversity;

(b) Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes and international cooperation in research and development related to conservation and sustainable use of biological diversity; and

(e) Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions, terms of reference, organization and operation of this body may be further elaborated by the Conference of the Parties.

Article 26. Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

Article 27. Settlement of Disputes

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with the procedure laid down in Part 1 of Annex II;

(b) Submission of the dispute to the International Court of Justice.

4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.

5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 28. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted at a meeting of the Conference of the Parties.

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 29. Amendment of the Convention or Protocols

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any Party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 30. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of the Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 29;

(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below;

(c) On the expiry of one year from the date of the communication of the adoption by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provisions of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention or to any protocol, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention or to the protocol concerned enters into force.

Article 31. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 32. Relationship between This Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting Party to this Convention.

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned. Any Contracting Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

Article 33. Signature

This Convention shall be open for signature at Rio de Janeiro by all States and any regional economic integration organization from 5 June 1992 until 14 June 1992, and at the United Nations Headquarters in New York from 15 June 1992 to 4 June 1993.

Article 34. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.
3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article 35. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.
3. The provisions of Article 34, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 36. Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.
2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol, has been deposited.
3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 37. Reservations

No reservations may be made to this Convention.

Article 38. Withdrawals

1. At any time after two years from the date on which this Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 39. Financial Interim Arrangements

Provided that it has been fully restructured in accordance with the requirements of Article 21, the Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the institutional structure referred to in Article 21 on an interim basis, for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties or until the Conference of the Parties decides which institutional structure will be designated in accordance with Article 21.

Article 40. Secretariat Interim Arrangements

The secretariat to be provided by the Executive Director of the United Nations Environment Programme shall be the secretariat referred to in Article 24, paragraph 2, on an interim basis for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties.

Article 41. Depositary

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

Article 42. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Rio de Janeiro on this fifth day of June, one thousand nine hundred and ninety-two.

X
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Annex I

IDENTIFICATION AND MONITORING

1. Ecosystems and habitats: containing high diversity, large numbers of endemic or threatened species, or wilderness; required by migratory species; of social, economic, cultural or scientific importance; or, which are representative, unique or associated with key evolutionary or other biological processes;
2. Species and communities which are: threatened; wild relatives of domesticated or cultivated species; of medicinal, agricultural or other economic value; or social, scientific or cultural importance; or importance for research into the conservation and sustainable use of biological diversity, such as indicator species; and
3. Described genomes and genes of social, scientific or economic importance.

X
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Annex II

Part 1

ARBITRATION

Article 1

The claimant party shall notify the secretariat that the parties are referring a dispute to arbitration pursuant to Article 27. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The secretariat shall forward the information thus received to all Contracting Parties to this Convention or to the protocol concerned.

Article 2

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.
3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Part 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.